Supreme Court, U.S.
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No.

In The
Supreme Court of the United States

Allison Alphonso Ross,

Petitioner

v.

University of South Carolina, and Gene Luna

On Petition For Writ of Certiorari
To The United States Court of Appeals
For the Fourth Circuit

PETITION FOR A WRIT OF CERIORARI

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Questions Presented for Review

Did the defendant's violate the plaintiff's right to make and enforce contracts, the plaintiff's protection of impairment under 42 USC 1981 and plaintiff's right to life, liberty, and property, under the fifth and fourteenth amendments; additionally, did defendants violate plaintiff right to free speech covered by the first amendment under 42 USC 1983?

Parties to the Proceeding/Rule 14. 1(b)

The parties are to the proceeding are Plaintiff, Allison A. Ross and Defendant, University of South Carolina and Gene Luna. Rule 29.6 does not apply.

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Federal Rule of Evidence 406..... 7, 8

III. Citations of Opinions and Orders/Rule 14. 1 (d)

The following is a list of the citations of opinions and orders entered in the case by courts or administrative agencies: Order No.: C/A 3: 99-984-17BD by Joseph F. Anderson, Jr., Chief District Judge; Appeal No.: 00-1793 by U.S. Court of Appeals for the Fourth Circuit Judges Widner, Michael, and King; Petition for rehearing denied on December 1, 2000.

IV. Basis for Jurisdiction/Rule 14.1(e)

The order to be reviewed is C/A No.: 3:99-984-17 BD is dated June 1, 2000. The petition for rehearing was denied on December 1, 2000.The statutory provisions believed to confer on this Court jurisdiction to review are as follows: 42 USC 1981, 42 USC 1983, the First amendment, the Fifth Amendment and the Fourteenth amendment, and Federal Rules of Evidence 401 and 406. Rule 29.4 (b) or (c) do not apply.

V. Constitutional Provisions, Treaties, Statues, Ordinances and Regulations/Rule 14.1 (f)

The following constitutional provisions, treaties, statues, ordinances and regulations are involved in this case: U.S. Code 42 Sec. 1981, U.S. Code 42 Sec. 1983, the First Amendment, the Fifth Amendment, and the Fourteenth Amendment and Federal Rules of Evidence 401 and 406. The pertinent text is outlined in the Appendix.

VI. Facts of the Case/ Rule 14.1(g)

Mr. Ross filed a complaint with the South Carolina Human Affairs Commission, which was dual, filed with the U.S. Equal Employment Opportunity Commission. Mr. Ross received a Notice of his Right to bring Suit in this matter from the EEOC. On April 7, 1998, Mr. Ross filed this action in the US District Court in Columbia, alleging (1) discriminatory failure to promote in violation of Title VII; (2)

discriminatory termination in violation of Title VII; (3) deprivation of equal rights under 42 USC 1981; (4) breach of an employment contact in violation of South Carolina common law, brought against the University; (5) and violation of Mr. Ross's First Amendment rights under 42 U.S.C. 1983, brought as against Defendant Luna in his personal and individual capacity.

Mr. Ross is African American. Mr. Ross worked for the University of South Carolina from July 1982 until September 3, 1998. Mr. Ross began his employment as an area manager for Residential Life Services and eventually achieved the position of Assistant Director of Housing Maintenance (ADHM). The ADHM position is directly below the Associate Director of Housing Facilities (ADHF) position. In the fall of 1997, the University of South Carolina began the process of selecting a candidate for the ADHF position. Gene Luna formed a screening committee to narrow the applicant field and to select the finalist for the ADHF position. Of the thirty-eight applicants who applied for the ADHF position, the screening committee selected only eight, of whom Mr. Ross was not one. Mr. Ross holds a Master of Arts Degree in Human Resource Management, a Bachelor of Science in Social Sciences, and an Associate Degree in Marketing. Candidate Battenhouse was eventually selected to fill the ADHF position, instead of Mr. Ross. Thomas Battenhouse holds a Bachelor's Degree.

Mr. Ross filed an internal grievance on March 16th, 1998, alleging, inter alia, race discrimination. Following an unfavorable decision, on May 11, 1998 Mr. Ross appealed the decision, and pursued other grievance avenues. Both Gene Luna and Mr. Battenhouse were required to present testimony and participate in the fact finding of these complaints and grievances. Mr. Ross went on to file complaints with the Office of Federal Compliance Programs, the EEOC and the SCHAC, complaining of, inter alia, race

discrimination. Following Mr. Ross's complaints about race discrimination, and in retaliation for said complaints, Battenhouse at the direction of Gene Luna and as an agent of the University of South Carolina, began to scrutinize Mr. Ross's work, and to prevent Mr. Ross from managing his job area. Although employees had previously been encouraged to engage in some form of stress relief, Battenhouse instructed Mr. Ross to remove a miniature putting green that had served Mr. Ross as a stress relief device. Although no other employees were told to leave their door open, Battenhouse under the direction of Gene Luna, told Mr. Ross to leave his door open. The University of South Carolina changed their policy after Mr. Ross complained of racial discrimination. Gene Luna had been on the job for five years prior to Mr. Ross's termination, and Gene Luna had not objected to closed doors or stress relief devices.

Following Mr. Ross' complaints about race discrimination, and in retaliation for said complaints, Battenhouse began to keep detailed notes and recording dates concerning the most miniscule areas of Mr. Ross's conduct, such as Mr. Ross keeping his door closed and open. Battenhouse imposed unreasonable request on Mr. Ross, and made written records of the occasions Mr. Ross could to respond to these requests. These and other retaliatory acts by the University of South Carolina made it difficult for Mr. Ross to meet the University of South Carolina and Gene Luna's subjective standard of performance. After increasing scrutiny of Mr. Ross's performance, because of Mr. Ross's speech about race discrimination, making Mr. Ross work conditions unreasonable, the University of South Carolina and Gene Luna terminated Mr. Ross on September 3, 1998, labeling the Mr. Ross as insubordinate.

Rule 14.1 (g) (ii). The basis for federal jurisdiction is founded upon federal question jurisdiction (28 U.S.C. § 1331). Jurisdiction is also founded upon Civil Rights

jurisdiction (28 U.S.C. § 1343 (a) (3), and (a) (4), and also upon 42 U.S. C. 2000e 5(f)(3).

VII. Argument/Rule 14.1 (h)

A. Statement Taken Out of Context to Rule Against Mr. Ross

The lower court bases its decision on a statement that the Plaintiff made when responding to his status as a Vietnam Veteran and not a Black male. The Magistrate Judge fails to state this particular answer was in response to a Department of Labor form and in reference to the Plaintiff's status as a "protected employee" under the provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1973, as amended. The statement has been taken out of context and misused to rule against Mr. Ross on the basis on public concern and race. Mr. Ross's discrimination charges were known publicly and any results of the actions would be known by all and effect all University employees. At a jury trial, testimony could be offered that Mr. Ross was viewed as a leader in the African-American community at the University and even assisted other staff with concerns of discrimination against the University of South Carolina. If this question had been asked based on race there is adequate evidence to show disharmony among University employees based on racial discrimination during the time frame in which the Mr. Ross made his initial complaint.

B. Mr. Ross Claims Retaliation

The Magistrate Judge ignores Mr. Ross's argument that prior to complaints about racial discrimination, Mr. Ross was not reprimanded for poor performance. In fact during a trial, Mr. Ross could offer evidence to show that the Defendant's began a conspiracy to terminate the Plaintiff as early as May1998 as indicated by a memorandum sent from Tom Battenhouse to the Personnel department of the University of South Carolina. The University of South

Carolina has not proved a reason other than retaliation for the termination of Mr. Ross. The magistrate judge accepted personal notes of Thomas Battenhouse, employee of the University of South Carolina, which were not a part of Mr. Ross's official personnel record which is illegal.

C. Mr. Ross denied Due Process

Mr. Ross has been denied his fourth amendment right to Due Process and the rights afforded Mr. Ross under the Due Process clauses found in the Fifth and Fourteenth Amendments to the U.S. Constitution, when plaintiff was terminated without warning as expressly stated in the University of South Carolina's policies and procedures manual: "A fundamental, constitutional guarantee that all legal proceedings will be fair and that one will be given notice of the proceedings and an opportunity to be heard before the government acts to take away one's life, liberty, or property.(West's Encyclopedia of American Law)". Also, a constitutional guarantee that a law shall not be unreasonable, arbitrary, or capricious. The constitutional guarantee of due process of law, found in the Fifth and Fourteenth Amendments to the U.S. Constitution, prohibits all levels of government from arbitrarily or unfairly depriving individuals of their basic constitutional rights to life, liberty, and property. The Due Process Clause of the Fifth Amendment, ratified in 1791, asserts that no person shall "be deprived of life, liberty, or property, without due process of law." This amendment restricts the powers of the federal government and applies only to actions by the federal government. The Due Process Clause of the Fourteenth Amendment, ratified in 1868, declares, "[N]or shall any State deprive any person of life, liberty, or property, without due process of law" (§ 1). This clause limits the powers of the states rather than those of the federal government.

The Due Process Clause of the Fourteenth Amendment has also been interpreted by the Supreme Court

in the twentieth century to incorporate protections of the Bill of Rights, so that those protections apply to the states as well as to the federal government. Thus, the Due Process Clause serves as the means whereby the Bill of Rights has become binding on state governments as well as the federal government.

The phrase "procedural due process" refers to the aspects of the Due Process Clause that apply to the procedure of arresting and trying persons accused of crimes and to any other government action that deprives an individual of life, liberty, or property. Procedural due process limits the exercise of power by the state and federal governments, by requiring that they follow certain procedures in criminal and civil matters. In cases where an individual has claimed a violation of due process rights, the courts must determine whether a citizen is being deprived of "life, liberty, or property," and what procedural protections are "due" that individual. The Bill of Rights contains provisions that are central to procedural due process. Procedural due process also protects individuals from government actions in the civil as opposed to criminal sphere. These protections have been extended to include not only land and personal property, but also entitlements, including government-provided benefits, license, and positions. Thus, for example, the Court has ruled that the federal government must hold hearings before terminating welfare benefits (*Goldberg v. Kelly*, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 [1970]).

D. The University of South Carolina Cannot Prove Just Cause

Determining just cause is a question of fact to be determined in each particular circumstance and employment situation. The employees conduct should be judged not only by the individual action but also by his past conduct and length of service that helps to put any individual act of alleged misconduct in context. In situations of deteriorating

performance, before dismissing on this ground and alleging Just Cause the courts in these circumstances have implied a general duty on the employer to warn the employee about his performance or lack thereof and need to improve. Mr. Ross received no warnings that he would be terminated for failure to remove a putting green from his office or keep his office door open. The employer must also give the employee sufficient time for the employee to improve before there will be grounds to dismiss the employee summarily upon the ground of Just Cause. The warning to the employee must be clear and unequivocal, which in general requires the warnings to be in writing. Mr, Ross received no warnings. The employer must also outline to the employee the steps needed to be taken to improve and recommend to the employee areas in which the employee could improve upon. Mr. Ross received no information regarding areas for improvement. The employer who gives the employee a period of time to improve cannot dismiss during this trial period on the grounds of Just Cause. If the employer has knowledge of misconduct, incompetence or any other transgression of the employee and condones such conduct it cannot use such conduct as grounds for dismissal on the basis of Just Cause. The University of South Carolina did not comply with these provisions.

E. Federal Rules of Evidence 401 and 406

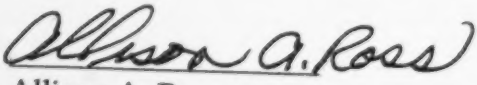
The lower court erred in giving equal weight to the evidence in light of Federal Rules of Evidence rules 401 and 406. Rule 401 states ""Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence". The lower court fails to address how a statement made in reference to Mr. Ross status as a protected employee under the Vietnam Veterans Readjustment Act is relevant to this case. The magistrate uses this evidence as the basis for his judgement.

The University of South Carolina claims that Mr. Ross was terminated for insubordination. Mr. Ross maintains the orders to remove a putting green and keep the plaintiff's door open violate Rule 406, in that, the personal item Mr. Ross was asked to remove had been in his office for six years. The department chair, Eugene Luna, knew that the putting green was in Mr. Ross's office, and knew of his habit of swinging a golf club in his office. Therefore, the University of South Carolina' Mr. Ross s claim of insubordination violates Rule 406 Habit; Routine, Practice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Allison A. Ross, pro se

Dated: February 28, 2001